

1 MANATT, PHELPS & PHILLIPS, LLP
2 RONALD S. KATZ (California Bar No. 085713)
E-mail: rkatz@manatt.com
3 RYAN S. HILBERT (California Bar No. 210549)
E-mail: rhilbert@manatt.com
4 1001 Page Mill Road, Building 2
Palo Alto, CA 94304-1006
5 Telephone: (650) 812-1300
Facsimile: (650) 213-0260

6 Attorneys for Defendant and Counter-Claimant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 VISA U.S.A. INC.

Plaintiff

CIVIL ACTION NO. C07-5585 JSW

MISCELLANEOUS ADMINISTRATIVE
REQUEST BY MARITZ, INC. FOR AN
ORDER RE-SCHEDULING HEARING DATE

15 | VS.

MARITZ INC. d/b/a MARITZ LOYALTY
MARKETING

Defendant.

AND RELATED COUNTERCLAIMS

Pursuant to Civil Local Rule 7-10 and 6-3, Defendant Maritz Inc. ("Maritz") hereby applies for an Order re-scheduling the February 29, 2008 hearing date for parties' respective motions.¹ Maritz's lead counsel, Ronald S. Katz, has a pre-scheduled, pre-paid vacation on February 29, 2008 that has been planned for two years. For the reasons given below, Maritz respectfully requests that the hearing on the parties' respective motions be re-scheduled for 1:30 p.m. on February 22, 2008. In the alternative, Maritz respectfully requests that the hearing on the parties' respective motions continued one week to March 7, 2008.

I. RELEVANT BACKGROUND

On January 18, 2008, this Court issued an Order in which it (among other things) continued the hearing on the parties' respective motions from February 22, 2008 until February 29, 2008. *See* Declaration of Ronald S. Katz ("Katz Decl."), Exhibit A. The hearing had originally been scheduled for February 8, 2008. As disclosed to Visa's lead counsel in a telephone call the morning of January 18 and in subsequent e-mail correspondence, Maritz's lead counsel, Ronald S. Katz, has a prescheduled, prepaid vacation on February 29, 2008. Katz Decl., Exhibit B (itinerary of trip).

Once the parties received the Court's Order re-scheduling the hearing for February 29, they agreed, before burdening the Court with this issue, to wait and see whether Judge Roesch of the Alameda Superior Court would move the February 22, 2008 hearing which caused the parties to request relief from this Court in the joint letter brief dated January 18, 2008. Katz Decl., Exhibit C (specifically the 4:16 p.m. and 4:19 p.m. emails on January 18). This past Tuesday Judge Roesch declined to move that hearing, which would have enabled the parties to ask this Court to re-institute the previously set hearing at 9:00 a.m. on February 22, 2008.

Maritz's lead counsel is available at 1:30 p.m. on February 22, 2008, as is lead counsel for Visa. Katz Decl., Exhibit C (specifically the 6:36 p.m. and 6:43 p.m. emails on January 22).

¹ Maritz filed its Motion to Stay Arbitration on December 20, 2008 and noticed the hearing for February 8, 2008 (the earliest available date on the Court's calendar). By Order of this Court, Visa's Opposition was due on January 11, 2008, and Maritz's Reply was due on January 18, 2008. In response to Maritz's Motion, Visa filed a Motion to Compel Arbitration on January 4, 2008 (the last day on which Visa could still get a February 8 hearing date). Under Local Rule 7-3, Maritz's Opposition was due January 18, 2008 and Visa's Reply is due on January 25, 2008.

1 Maritz's lead counsel also is available on March 7. (For the Court's information, Maritz's
 2 corporate representative is unavailable March 14.)

3 **II. ARGUMENT**

4 **A. Maritz Respectfully Requests that the Court Re-Schedule the February 29,
 5 2008 Hearing Date**

6 Mr. Katz has been planning this vacation for two years, long before he was contacted to
 7 represent Maritz in this case. Katz Decl., ¶ 3. Mr. Katz would have raised this issue with the
 8 Court in the parties' January 18 joint letter had he known the Court was contemplating re-
 9 scheduling the hearing. *See id.*, ¶ 4. Mr. Katz did not raise it at that time with the Court because
 10 neither party was seeking a hearing on February 29, 2008. *Id.* Mr. Katz was also hopeful that he
 11 could move his hearing before Judge Roesch such that the conflict no longer existed.

12 Mr. Katz is and always has been the lead counsel for Maritz in this case. Mr. Katz also is
 13 the only California-based partner working on this case for Maritz. Other lawyers in another law
 14 firm working on this case are in Maritz's home state of Missouri and have yet to make an
 15 appearance before this Court. Given the number of motions at issue (three), and the fact that
 16 these motions could have dispositive effects on Maritz (e.g., by resulting in Maritz being forced
 17 to arbitrate and thereby lose its right to a jury trial), Maritz respectfully requests that the February
 18 29, 2008 hearing date for the parties' respective motions be re-scheduled so that its lead counsel
 19 in this case may appear at oral argument on Maritz's behalf.

20 **B. Visa Would Not Be Prejudiced Should The Court Continue the Hearing Date
 21 One Week to March 7, 2008**

22 Maritz is willing and able to have the parties' respective motions heard at 1:30 p.m. on
 23 February 22, 2008, a time at which Visa's lead counsel also remains available. Katz Decl.,
 24 Exhibit C (specifically the 6:36 p.m. and 6:43 p.m. emails on January 22). (Maritz would also be
 25 willing to have the hearing prior to February 22, but does not want to waive its right to a reply
 26 brief on its discovery motion and/or deprive this Court of the time it may need to read and digest
 27 the parties' papers.) In the event 1:30 p.m. on February 22 is not convenient for the Court, Maritz
 28 respectfully requests that the hearing be continued one week to March 7, 2008. Though Visa's

1 lead counsel has expressed a general objection to March 7, he did not indicate that he is
2 unavailable on that date. Katz Decl., Exhibit C.

3 Visa has not articulated and cannot articulate how it will be prejudiced should this Court
4 continue the hearing just one week until March 7, 2008. The arbitration that Visa wants is
5 ongoing, and no additional litigation costs are likely to be incurred from February 29 to March 7.

6 **III. CONCLUSION**

7 For these reasons, Maritz respectfully requests that the Court order re-schedule the
8 February 29 hearing date on the parties' respective motions.

9 Dated: January 24, 2008

MANATT, PHELPS & PHILLIPS, LLP

10 By: /s/ Ryan S. Hilbert

11 Ronald S. Katz (SBN 085713)

12 Ryan S. Hilbert (SBN 210549)

13 MANATT, PHELPS & PHILLIPS, LLP

14 1001 Page Mill Road, Building 2

15 Palo Alto, CA 94304-1006

16 Telephone: (650) 812-1300

17 Facsimile: (650) 213-0260

18 *Attorneys for Defendant and Counter-Claimant*
19 MARITZ INC.

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